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Attorneys for Plaintiff Otilia Carrasco

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

OTILIA CARRASCO,) Case No. **'12CV1241 CAB BLM**
Plaintiff,) **Complaint For Damages**
vs.) **Jury Trial Demanded**
LEGAL RECOVERY LAW OFFICES, INC.,)
Defendants.)

INTRODUCTION

1. This is an action for actual damages, statutory damages, attorney fees and costs brought by an individual consumer, Otilia Carrasco, (hereinafter Plaintiff) for Legal Recovery Law Offices, Inc.(hereinafter “Defendant”) violations of the Fair Debt Collection practices Act, 15 U.S.C. § 1692, et seq. (hereinafter “FDCPA”)¹ the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 et seq. (hereinafter “the Rosenthal Act”)² which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.

2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to Plaintiff, or to plaintiff's counsel, which Plaintiff allege on personal

¹ All undesignated section references to §1692 are to the FDCPA.

² All undesignated section references to §1788 are to the Rosenthal Act

knowledge.

3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

JURISDICTION AND VENUE

4. This action arises out of Defendant's violations of the FDCPA and Rosenthal Act.

5. Jurisdiction arises pursuant to 28 U.S.C. § 1391, 1337, 15 U.S.C. §1692(k) (d), and 47 U.S.C. §277 et seq. and 28 U.S.C. §1367 for supplemental state claims.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

THE PARTIES

7. Plaintiff is a natural person residing in Santa Clara County, California.

8. Plaintiff is a consumer within the meaning of § 1692a(3) in that she is a natural person purportedly obligated to pay a credit card debt, allegedly owed to Capitol One Bank USA, (hereinafter “Debt”)

9. Plaintiff is a “debtor” as that term is defined by §1788.2(h).

10. At all times relevant herein, Defendant was a company engaged, by use of the mails and telephone in the business of collecting debts, as defined by §1692a(5), and consumer debts as defined by § 1788.2(f). Defendant regularly attempts to collect debts alleged to be due another and is therefore a debt collector within the meaning of §1692a(6) and §1788.2(c).

11. As Defendant do business in the state of California, is located in San Diego County, and has committed the acts that form the basis for this suit in the state of California, this Court has personal jurisdiction over Defendant for purposes of this action.

FACTUAL ALLEGATIONS

12. At all times herein, Defendant, was attempting to collect, from Plaintiff, a debt as defined by §1692a (5) of the FDCPA and a consumer debt as defined by § 1788.2(f) of the Rosenthal Act.

13. Prior to February 6, 2012, Plaintiff allegedly fell behind in the payment allegedly owed on the alleged debt. Plaintiff currently neither admits nor denies that the debt is valid.

14. Prior to February 6, 2012, the alleged debt was assigned, placed or otherwise transferred

1 to Defendants for collection.

2 15. Thereafter, Defendant sent a collection letter (hereinafter "Exhibit A") to Plaintiff. A
3 true and accurate copy of the letter and attachment is attached hereto and fully incorporated by
4 reference as Plaintiff's "Exhibit A".

5 16. The statements in Exhibit A were communications within the meaning of §1692a (2).

6 17. Exhibit A is dated February 6, 2012.

7 18. Exhibit A was the first written communication from Defendants to Plaintiff in
8 connection with the collection of the alleged debt.

9 19. In Exhibit A Defendant lists as part of the debt, court costs of \$225.00. There is not and
10 was not at the time Exhibit A was mailed to Plaintiff, an action to collect the debt which had been
11 resolved and thereby incurred or been awarded to Defendant, the costs of court. Therefore the attempt
12 to collect this cost is a misrepresentation of Plaintiff's obligation by threatening to collect fees or a
13 charge not owed. Additionally it is an attempt to collect an amount that is neither expressly authorized
14 by the agreement causing the debt nor permitted by law. This action violates §1692 e(10), §1692 f(1)
15 and §1788.13(e).

16 20. Plaintiff is informed and believes and thereon alleges that Defendants have sent standard
17 form collection letters in the form of Exhibit A to numerous persons in California in the one year period
18 preceding the filing of this Complaint. Therefore, Plaintiff may seek leave to amend this Complaint to
19 add class allegations at a later date.

20 21. Because these actions violated the FDCPA sections cited herein, Defendant also violated
21 §1788.17 of the Rosenthal Act as it incorporates those sections.

22 **FIRST CLAIM FOR RELIEF**

23 **(Violations of the FDCPA)**

24 31. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in
25 the paragraphs above.

26 32. The foregoing acts and omissions constitute numerous and multiple violations of the
27 FDCPA, including but not limited to each and every one of the above cited provisions of the FDCPA,
28 15 U.S.C. § 1692 et seq.

1 33. As result of each and every violation of the FDCPA, Plaintiff is entitled to any actual
2 damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00
3 pursuant to 15 U.S.C. § 1692k(a)(2)(A); reasonable attorney's fees and costs pursuant to 15 U.S.C. §
4 1692k(a)(3) from defendant.

5 **SECOND CLAIM FOR RELIEF**

6 **(Claim for violations of the Rosenthal Act)**

7 22. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in
8 the paragraphs preceding the First Claim for Relief.

9 23. Plaintiff is entitled to statutory damages of \$1000.00 as Defendant's acts and omissions
10 violated the Rosenthal Act including, but not limited to §1788.17. Defendant's violations of § 1788.17
11 of the Rosenthal Act (which incorporates several of the provisions of the FDCPA) include, but are not
12 limited to those enumerated in the above First Claim for Relief.

13 24. Plaintiff is entitled to statutory damages of \$1000.00 under §1788.30(b) for Defendant's
14 violations, as enumerated above, of §1788.13(e).

15 25. Pursuant to §1788.32, the remedies provided under §§1788.30(b) and 1788.17 are
16 intended to be cumulative and in addition to any other procedures, rights or remedies that Plaintiff may
17 have under any other provision of law.

18 26. Defendants' violations of the Rosenthal Act were willful and knowing, thereby entitling
19 Plaintiff to statutory damages pursuant to § 1788.30(b) of the Rosenthal Act.

20 27. Defendant's acts as described above were done intentionally with the purpose of
21 coercing Plaintiff to pay the debt.

22 28. As a proximate result of the violations of the Rosenthal Act committed by Defendant,
23 Plaintiff is entitled to any actual damages, statutory damages, reasonable attorney's fees and costs of
24 this action.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and for Plaintiff
27 requests this Court:

28 (1) Assume jurisdiction in this proceeding;

- (2) Declare that the Defendant violated the FDCPA;
- (3) Declare that the Defendant violated the Rosenthal Act;
- (4) Award actual damages in accordance with proof at trial, pursuant to §1692k(a)(1) of the FDCPA and § 1788.30(a) of the Rosenthal Act;
- (5) Award statutory damages of an amount not exceeding \$1,000.00 pursuant to § 1692k(a)(2)(A) of the FDCPA;
- (6) Award statutory damages of an amount not exceeding \$1,000.00 pursuant to §1788.30(b) of the Rosenthal Act for violation of § 1788.17 of the Rosenthal Act³;
- (7) Award of statutory damages of \$1000.00 pursuant to § 1788.30(b) of the Rosenthal Act for separate violations of §1788.13(e).
- (8) Award of the costs of litigation and reasonable attorney's fees, pursuant to §1692k (a) (3) of the FDCPA and § 1788.30(c) of the Rosenthal Act.
- (9) Such other and further relief this court may deem just and proper.

Dated May 22, 2012

s/ Patric A. Lester
Patric A. Lester
Attorney for Plaintiff
Otilia Carrasco

³ § 1692k(a)(2)(A) of the FDCPA



P.O. Box 84060, San Diego, CA 92138-4060
 Tel: 619-275-4001 • Toll Free: 800-785-4001 • Fax: 619-275-4010

Otilia Carrasco
 7784 Oak Spring Cir # 1
 Gilroy CA 95020-9572

Date:	February 6 2012	Payments Received
File #:	4147097060916972	by LRLO: \$0.00
Account #:	826049	Current Principal: \$20243.67
Client:	CAPITAL ONE BANK (USA)	Interest: \$0.00
	N.A.	Court Costs: \$225.00
Original Creditor:	VW - VISA SIGNATURE	Attorney's Fees: \$0.00
Referred Balance:	\$20468.67	Other Costs: \$0.00
		Total Due: \$20468.67

The above referenced account has been placed with this office for collection and resolution. As of the date of this letter, the client named above claims that you have a delinquent account owed in the amount of \$20468.67. At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. Because of interest late charges and other charges that vary day to day the amount due on the day you pay may be greater. Hence if you pay the amount shown above an adjustment may be necessary after we receive your check.

Unless you notify this office within 30 days of receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that this debt, or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

In the event that legal action is pursued and judgment is ultimately obtained against you, the judgment may include court costs local attorneys fees and interest in addition to the principal amount currently owed.

This notice has been sent to you by a law office specializing in the area of debt collection. Be advised that this is an attempt to collect a debt and any information obtained will be used for that purpose. "The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov."

If paid in full to this office, all collection activity will be stopped.

Please include your file number on all correspondence and/or remittance and mail it to PO Box 84060, San Diego, CA 92138.

Sincerely,

Mark D. Walsh, Esq.
 Attorney at Law

585-SFLRLO10-A10-1/06/10

*** Please Return Bottom Portion With Payment ***

Y1130C0564



5030 Camino De La Siesta Ste 340
 San Diego CA 92108-3118
 RETURN SERVICE REQUESTED

Account #: 826049
 Total Due: \$20468.67

Date: February 6 2012

0026020024005379569195020957284-1-Y1130C0564 585

- A10 - 585

Otilia Carrasco
 7784 Oak Spring Cir # 1
 Gilroy CA 95020-9572

Legal Recovery Law Offices
 5030 Camino De La Siesta Ste 340
 San Diego CA 92108-3118

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

OTILIA CARRASCO

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Patric A. Lester, Lester & Associates, 5694 Mission Center Rd. #358,
San Diego, Ca., 92108 (619)-665-3888

DEFENDANTS

LEGAL RECOVERY LAW OFFICES, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'12CV1241 CAB BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 470 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 471 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 472 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC §1692 et. seq.

Brief description of cause: Fair Debt Collection Practices Act violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$ 75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

May 22, 2012

/s/ Patric A. Lester

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____